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STATE OF MAHARASHTRA

v

KESHAV RAMCHANDRA PANGARE AND ANR.

NOVEMBER 1, 1999

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[K. T. THOMAS AND M. B. SHAH, JJ.]

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Penal Code, 1860/Prevention of Corruption Act, 1947/Criminal Procedure Code, 1973/ Maharashtra Civil Services (Pension) Rules, 1982: Sections 120-B, 406, 420, 465, 466, 467, 468, 471, 477 and 109/ Sections 5(1) (d) and 5(2)/ Sections 4, 468 (2) and 470 (3)/Rule 27 (3)—Respondent charged for the offences of corruption, misappropriation etc. after his retirement—Cognizance taken four years after commission of offence—Sanction obtained—Respondent challenged the proceedings in writ petition—Protection under Pension Rule 27 sought on the ground of lapse of four years after the commission of offence—Writ Petition allowed and proceedings quashed by the Court—On appeal, Held: Pension rule 27 is in the context of right of the Government to withhold or withdraw pension—Rule 27 does not effect criminal trial under Cr.P.C.—There is no period of limitation in Cr.P.C. for an offence punishable with imprisonment exceeding three years—Time required for obtaining sanction is excluded—Trial against respondent not barred by limitation—Service Law.

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Respondent No. 1 who was working in the Public Works Department in the State of Maharashtra retired from service in 1987. In 1990, R-1 alongwith some others was chargesheeted for offences under Sections 120-B, 406, 420, 465, 466, 467, 468, 471, 477 and 109 IPC alongwith Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947. The Special Court, after obtaining the sanction, took cognisance and issued process. The respondents challenged the said proceedings before the High Court in a writ petition on the ground that the complaint was filed beyond the period of four years from the date of commission of the offence and therefore, it was barred by Rule 27 (3) of the Maharashtra Civil Services (Pension) Rules, 1982. The said writ petition was allowed and the proceedings were quashed. Hence this appeal.

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The appellant contended that Rule 27 of the Pension Rules cannot have an overriding effect to the provisions of Cr.P.C. It was also contended that

Rule 27 of the pension Rules was not applicable to prosecution in a criminal court. A

Allowing the appeal, the Court

HELD: 1.1. Section 4 of the Criminal Procedure Code, 1973 specifically provides that all offences under the IPC shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained therein. Admittedly, against respondent No. 1 chargesheet is filed for the offences punishable under IPC and Prevention of Corruption Act, 1947 and he is to be tried as per the procedure prescribed under the Cr.P.C. [264-B-C] B

1.2. Chapter XXXVI of Cr.P.C. containing Sections 467 to 473 deals with limitation for taking cognizance of certain offences. Section 468 provides for a bar for taking cognizance of an offence after the expiry of period of limitation prescribed under sub-section 2. Period of three years is provided for an offence punishable with imprisonment for a term exceeding one year but not exceeding three years. If the offence is punishable with imprisonment for a term exceeding three years, then there is no period of limitation prescribed under the Cr.P.C. Further sub-section 3 of Section 470 excludes the time required for obtaining sanction where the previous sanction of the Government or any other authority is required for the institution of any prosecution for an offence. Hence, it is apparent that as the offences for which respondent No. 1 is charge-sheeted are punishable with imprisonment for a term exceeding three years, there is no period of limitation prescribed under Section 468 Cr.P.C. In any case, where period of limitation is required to be taken for consideration, sub-section 3 of Section 470 Cr.P.C. excludes the period required for obtaining previous sanction for institution of prosecution. In the present case, sanction of prosecution was obtained on 25-08-1989. Hence, if at all the period of limitation is applicable, the time required for obtaining sanction is to be excluded. Therefore, it cannot be stated that the prosecution instituted against the respondent is barred by any period of limitation. [264-B, C, F, G, H; 265-A] C
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2.1. Whether or not a government servant should be prosecuted for an offence committed by him obviously cannot be treated to be something pertaining to conditions of service; therefore, making a provision that a government servant, even if he is guilty of grave misconduct or negligence which constitutes an offence punishable either under IPC or the Prevention of Corruption Act or an analogous law should be granted immunity from such G
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A prosecution after the lapse of a particular period so as to provide incentive for efficient work, would not only be against public policy but would also be counter-productive. Such a situation cannot be created by framing a rule under Article 309 of the Constitution laying down an embargo on prosecution as a condition of service. [267-G, H; 268-A]

B *State of Punjab v. Kailash Nath*, [1989] 1 SCC 321 and *Prabhakar Govind Sawant v. State of Maharashtra and Ors.*, (1991) Maharashtra Law Journal 1051, relied on.

C 2.2. Rule 27 (1) of the Maharashtra Civil Services (Pension) Rules, 1982 provides right of Government to withhold or withdraw a pension and in that context the said rule is to be interpreted. Under the said rule, the Government may, *inter alia*, order withholding or withdrawing a pension or any part thereof, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. It also empowers the government to order the recovery from such pension of the whole or part of any pecuniary loss caused to the government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. If something is to be recovered from the pension payable to the employee then the judicial proceeding or departmental enquiry is required to be started within the period prescribed under sub-rule 2 or 3 but that would not debar the prosecuting agency from launching the prosecution for the offence of grave misconduct. This rule is to be read with the previous Rule 26 which provides that future good conduct shall be an implied condition of every grant of pension and Government may withhold or withdraw pension or part thereof, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. But Rules 26 and 27 of the Pension Rules do not lay down any period of limitation for prosecution or could not supersede the period of limitation prescribed under the Cr.P.C. Rule 27 is only meant for the purpose of granting. Withholding or withdrawing the pension and hence its operation would be in the limited field of granting or withholding pension to the government employees. The provisions of Cr.P.C. shall have an overriding effect and shall prevail notwithstanding any provision in the Pension Rules framed by the State Government. [267-F, G, H; 268-A-E]

H CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1169 of 1999.

From the Judgment and Order dated 18.9.98 of the Bombay High Court in CrI. W.P. No. 484 of 1991. A

Gopal Balwant Sathe for the Appellant.

Ajay Majithia and Yash Pal Dhingra for the Respondent No. 1. B

The Judgment the Court was delivered by

SHAH, J. Leave granted.

Respondent No. 1 was serving as Deputy Engineer, P.W.D. in the State of Maharashtra. On 13 October 1990, a charge sheet No. 247 of 1990 was filed against the respondent and several other officers of the Department before the Special Court, Satara, and the case was numbered as Special Case No. 5 of 1990. Respondent retired on 31 December 1987 as Deputy Engineer. Necessary sanction for prosecuting the respondent for the offences punishable under sections 120-B, 406, 420, 465, 466, 467, 468, 471, 477 and 109 of the I.P.C. and Section 5(1)(c)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 was obtained. The judge of the special court took cognisance of the offences and issued process against the respondent. C D

Thereafter the respondent filed Criminal Writ Petition No. 484 of 1991 before the High Court of Judicature at Bombay for quashing the criminal proceedings on the ground that the complaint was filed beyond the period of four years from the date of the commission of the offence and therefore, it was barred by Rule 27 (3) of the Maharashtra Civil Service (Pension) Rules, 1982 (hereinafter referred to as "the Pension Rules"). The High Court accepted the plea and held that Rule 27 of the Pension Rules was directly applicable and it is mandatory that prosecution should be launched within four years from the date of commission of offence. Hence, the court allowed the writ petition and quashed the proceedings in Special Case No. 5 of 1990 against the respondent. The said judgment of the learned Single Judge is being challenged now. E F

On the basis of the aforesaid Rule, learned counsel for the appellant submitted that in view of the provisions of Criminal Procedure Code (for short "the Code"), the bar contained in Pension Rule 27 cannot be invoked and it cannot have any overriding effect to the provisions of the Code. Even on merits, sanction to prosecute was received on 25 August, 1989 and therefore also, the submission of the charge-sheet before the Court on 30 October, 1990 G H

A was within time. It was alternatively contended that Rule 27 of the Pension Rules would not apply to prosecution in a criminal court.

B In our view, the contention raised by the learned counsel for the appellant requires consideration. Section 4 of the Code specifically provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained therein. Admittedly, against respondent no. 1 charge-sheet is filed for the offences punishable under the Indian Penal Code and Prevention of Corruption Act and he is to be tried as per the procedure prescribed under the Cr. P.C. Chapter XXXVI containing Sections 467 to 473 deals with limitation for taking cognisance of certain offences. Section 468 provides for a bar for taking cognisance of an offence after the expiry of period of limitation prescribed under sub-section (2) thus:

“468(2)—The period of limitation shall be—

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- (a) six months, if the offence is punishable with fine only;
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.”

E Period of three years is provided for an offence punishable with imprisonment for a term exceeding one year but not exceeding three years. If the offence is punishable with imprisonment for a term exceeding three years then there is no period of limitation prescribed under the Criminal Procedure Code. Further sub-section (3) of Section 470 excludes the time required for obtaining sanction where the previous sanction of the Government or any other authority is required for the institution of any prosecution for an offence. Hence, it is apparent that as the offences for which respondent no. 1 is charge-sheeted are punishable with an imprisonment for a term exceeding three years there is no period of limitation prescribed under Section 468 Cr. P.C. In any case, where period of limitation is required to be taken for consideration, sub-section (3) of Section 470 Cr. P.C. excludes the period required for obtaining previous sanction for institution of prosecution. In the present case, sanction of prosecution was obtained on 25.8.1989. Hence, if at all the period of limitation is applicable, the time required for obtaining sanction is to be excluded. Therefore, it cannot be stated that the prosecution instituted against the respondent is barred by any

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period of limitation.

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The next question is - what would be the effect of Pension Rules which prescribe a period of limitation ? For considering the contentions urged by learned counsel for the parties, it would be necessary to refer to relevant part of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as under :—

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“Rule 27. Right of Government to withhold or withdraw pension.—

- (1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether, permanently or for a specified period, and also order the recovery from such pension to whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

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Provided.....

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Provided.....

- (2) (a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

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(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,—

(i) shall not be instituted save with the sanction of the Government.

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(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place

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A as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

B (3) No judicial proceedings, if not instituted while the government servant was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

(4)

C (5)

(6)"

D Similar contention was dealt with by this Court in *State of Punjab v. Kailash Nath*, [1989] 1 SCC 321, wherein the Court considered similar Service Rule 2.2 of the Punjab Civil Service Rules. The Court held that whether or not a government servant should be prosecuted for an offence committed by him obviously cannot be treated to be something pertaining to conditions of service; therefore, making a provision that a government servant, even if he is guilty of grave misconduct or negligence which constitutes an offence punishable either under the Penal Code or the Prevention of Corruption Act or an analogous law should be granted immunity from such prosecution after the lapse of a particular period so as to provide incentive for efficient work would not only be against public policy but would also be counter-productive. Such a situation cannot be created by framing a rule under Article 309 of the Constitution laying down an embargo on prosecution as a condition of service. The court further held (in para 11 & 12) as under:—

G “(11)...If a rule containing an absolute or general embargo on prosecution of a government servant after his retirement for grave misconduct or negligence during the course of the service does not fall within the purview of laying own conditions of service under Article 309, such a provision cannot in the purported exercise of power under Article 309 be made by either incorporating it in the substantive clause of a rule or in the proviso thereto. In view of what has been said above and keeping in mind the scope of rule making power under Article 309 of the Constitution, the third proviso to Rule 2.2 cannot be interpreted as lying down an absolute or general embargo

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on prosecution of a government servant if the conditions stated therein are satisfied. Even if on first impression the said rule may appear to be placing such an embargo it has to be interpreted by taking recourse to the well settled rule of reading down a provision so as to bring it within the framework of its source of power without, of course, frustrating the purpose for which such provision was made. Clause (b) of Rule 2.2 which can be called the substantive clause reserves to the government the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the government if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

(12). The purpose of the third proviso thereto is, as is the scope of a proviso, to carve out an exception to the right conferred on the government by the substantive clause if the conditions contemplated by the proviso are fulfilled. This purpose can be achieved if the said proviso by adopting the rule of reading down is interpreted to mean that even if a government servant is prosecuted and punished in judicial proceedings instituted in respect of cause of action which arose or an event which took place more than four years before such institution the government will not be entitled to exercise the right conferred on it by the substantive provision contained in clause (b) with regard to pension of such a government servant.”

Similarly, in the present case, Rule 27 (1) provides right of Government to withhold or withdraw a pension and in that context the said rule is to be interpreted. Under the said rule, the Government may *inter alia* order withholding or withdrawing a pension or any part thereof, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. It also empowers the government to order the recovery from such pension of the whole or part of any pecuniary loss caused to the government if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service. In the context of the second part of sub rule (1), sub rule (3) is to be read and interpreted. If something is to be recovered from the pension payable to the employee then the judicial proceeding or departmental inquiry is required to be started within the period prescribed under the sub-rule (2) or (3) but that would not debar the

A prosecuting agency from launching the prosecution for the offence of grave misconduct. This rule is to be read with the previous Rule 26 which provides that future good conduct shall be an implied condition of every grant of pension and Government may withhold or withdraw a pension or part thereof, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. But the Pension Rules 26 and 27 do not lay down any period of limitation for prosecution or could not supersede the period of limitation prescribed under the Cr.P.C. Rule 27 is only meant for the purpose of granting, withholding or withdrawing the pension and hence its operation would be in the limited field of granting or withholding pension to the government employees.

C Relying upon the decision in *Kailash Nath (Supra)*, the learned Single Judge of the Bombay High Court in *Prabhakar Govind Sawant v. State of Maharashtra and others, (1991) Maharashtra Law Journal 1051*, rejected the contention that the prosecution was barred under Rule 27 of the Pension Rules as it was launched after the period of four years. In that case, the learned Judge also referred to Article 254 of the Constitution and held that the provisions of the Criminal Procedure Code shall have an overriding effect and shall prevail notwithstanding any provision in the Pension Rules framed by the State Government. It is unfortunate that the attention of the learned Single Judge was not drawn to the said decisions which are of binding nature at least as far as the High Court is concerned. That apart, learned Single Judge, instead of jumping into a conclusion solely based on Rule 27 of the Pension Rules should have examined the relevant provisions of the Code before axing down the criminal prosecution in respect of serious offences.

F In the result, the appeal is allowed. The impugned order dated 18.9.1998 passed by the High Court in Criminal Writ Petition No. 484 of 1991 is quashed and set aside. The trial court is directed to proceed with the matter.

R.C.K.

Appeal allowed.